IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 1514/2006
(Kuber Singh V/s State of Rajasthan & Anr.)

Date of Order : 06/07/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. R.S.Chundawat, for the petitioner.

Mr. Ashok Upadhyay, P.P.

None present for the respondent No.2 though served.

BY THE COURT:-

By order dated 24.11.2006 notice for final disposal was issued to the respondents. Notices have been received duly served Despite service, no one appears for the respondent No.2. Mr. AshokUpadhyay, Public prosecutor appears for the respondent No.1 State.

Heard learned counsel for the parties.

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 13.9.2006 passed by Additinoal Sessions Judge (Fast Track)

No.2, Udaipur (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 25.1.2001 passed by Additional Chief Judicial Magistrate, Kanod, district Udaipur (for short 'the trial court' hereinafter), was dismissed. Hence this criminal misc. petition.

It is contended by learned counsel for the petitioner that an FIR No. 60/98 P.S. Dungla for the offence under Section 8/15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act' hereinafter) was registered and the petitioner was investigating officer in the said FIR case. The accused in that FIR i.e. Bheru Singh and Kalulal were arrested and while they were in custody, they furnished information under Section 27 of the Evidence Act to get the poppy straw recovered from the godown which is alleged to be in possession of the present complainant non-petitioner No.2 Udailal. While discharging the official duty, the petitioner along with two accused Bheru Singh and Kalulal went to the godown to effect recovery of poppy straw as per the information furnished by accused persons and effected the recovery and thus, the petitioner has not committed any offence of theft. The accused persons Bheru Singh and Kalulal were challaned in the said FIR case and have been tried. Thus, the act complained of has been done while discharging the official duty. It is also contended by

the learned counsel for the petitioner that there had not been a sanction to prosecute the petitioner as envisaged under Section 197 Cr.P.C. and without there being any sanction, no Court shall take cognizance of an offence alleged to have been committed by the petitioner while acting or purporting to act while discharging his official duty. Learned counsel has relied on a three Judge bench decision of Hon'ble Supreme Court in 2006 Cr.L.R. (SC) 295 wherein Hon'ble Supreme Court held as under:-

> "The question is whether that act was done in the performance of duty or in purported performance of duty. If it was done in performance of duty or purported performance of duty Section 197 (1) of the Code cannot be by-passed by reasoning that killing a man could never be done in an official capacity and consequently Section 197 (1) of the Code could not be attracted. Such a reasoning would be against the ratio of the decisions of this Court referred to earlier. The other reason given by the High Court that if the High Court were to interfere on the ground of want of sanction, people will lose faith in the judicial process, cannot also be a ground to dispense with a statutory requirement or protection. Public trust in the institution can be maintained by entertaining causes coming within its jurisdiction, by performing the duties entrusted to it diligently, in accordance with law and the established procedure and without delay. Dispensing with of jurisdictional or statutory requirements which may ultimately affect the adjudication itself, will itself result in people losing faith in the system. So, the reason in that behalf given by the High Court cannot be sufficient to enable it to get over the jurisdictional requirement of a sanction under Section 197 (1) of the Code of Criminal Procedure. We are therefore, satisfied that the High Court was in error in holding that sanction under Section 197 (1) was not needed in this case. We hold that such sanction was necessary and for

want of sanction the prosecution must be quashed at this stage."

Section 197 Cr.P.C. provides that when any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the appropriate Government. Admittedly, in the instant case, no such sanction has been obtained. Even from the facts emerging from the material on record, it cannot be said that the petitioner has committed the offence under Section 380 IPC. It were the accused persons Bheru Singh and Kalulal in FIR No. 60/98 P.S. Dungla for the offence under Section 8/15 of the NDPS Act, who furnished the information while in custody that they have placed the poppy straw in the godown of the complainant non-petitioner No.2 and were prepared to get the same recovered and therefore, while discharging the official duty, the poppy straw was recovered at the instance of the two accused persons from the godown of the complainant non-petitioner No.2. In the circumstances, therefore, it cannot be said that the petitioner committed the offence of theft. On a careful perusal of the order passed by the courts below, in my view, both the courts below

failed to take note of the fact that the petitioner was investigating a crime report being FIR No.60/98 for the offence under Section 8/15 of the NDPS Act and in furtherance of the information furnished by the accused persons therein namely Bheru Singh and Kalulal reocvery of the poppy straw was got effected from the godown of the complainant. In such matters, even the complainant could have been proceeded under Section 411 IPC. Be that as it may, obviously there being no sanction and it is an undisputed fact that the petitioner being public servant effected the recovery of the poppy straw while discharging the official duty and therefore, protected by Section 197 Cr.P.C. and cannot be prosecuted in absence of the sanction. In this view of the matter, the criminal misc. petition deserves to be allowed.

In the result, the criminal misc. petition is allowed. The order dated 13.9.2006 passed by the Additional Sessions Judge (Fast Track) No.2, Udaipur in Criminal Revision No. 4/2005 and the order dated 25.1.2001 passed by the Additional Chief Judicial Magistrate, Kanod, district Udaipur in Criminal Case No. 18/2001 are hereby set aside and the proceedings against the petitioner are quashed.

(H.R.PANWAR),J.

rp